ACCIDENTS AT WORK IN SPAIN

Accidents and illness occurring and/or caused at work have traditionally been treated separately to those caused outside the employment relationship.

Liability & Causation

Before considering whether an employer should be found liable for his employee's injuries sustained whilst conducting his work, it is necessary for the employee to prove that such injuries were caused as a consequence of the breach of the employer's duty of care in avoiding the risk that provoked the accident.

The employee will have to prove - minimally - that the accident took place and that the injuries sustained and their extent corresponds to such accident.

The employer will bear the onus to prove that he should not be held liable because he has successfully proven that all possible measures to avoid or reduce the risk that caused the accident were taken even if the employee is the one who should be held responsible because of his own fault.

Requisites

Employer's liability towards a worker's claim for compensation arising from an accident at work requires that ALL of the following be proven:

a) an omission or non-accomplishment of any health and safety obligation, AND

b) that the employer's behaviour was caused by fault or negligence. The threshold to determine the employer's liability in employment accidents is set higher than in any other type of accident arising from a contractual relationship due to the very demanding preventive legislation imposed to the employer (see art. 15 LPRL), AND

c) the employee must have suffered a physical, psychological, moral or economic harm, AND

d) a causation link between the act or omission and the harm suffered by the employee. The employer will avoid liability only if he proves that it was a fortuitous or force majeure case or the exclusive fault of the employee.

How Are Damages Calculated According To Spanish Law?

The principle of full restitution of the harm caused (restitutio in integrum) to the employee (physical & psychological), economic loss (present and future income loss, employment expectancy) and injury to feelings applies (see Supreme Court Employment Tribunal decision of 17/07/2007) to accidents at work.

In order to assess the total amount payable, the following 4 areas must be taken into consideration:

i. Social Security contributions, which seek to compensate the loss of earnings to the employee through his/her inability to work and subsequently to earn his/her wages. These take place automatically regardless of the employer's liability. Any payment received by the employee via Social Security contributions will, however, be deducted from the final amount of award compensated until the principle is fulfilled.

ii. Top up Social Security contributions voluntarily agreed by the employer unilaterally or via the Convenio Colectivo (Regional or Occupational Union).

iii. Surcharge of i.) above following the employer's failure to comply with health & safety regulations up to 50%.

iv. Compensation provided by the Civil Code on account of any other head of loss not previously covered by i.) & ii.) above. Although not bounding, a Spanish court is likely to follow the - almost - yearly published RTA guidelines, albeit the compensation structure therein designed does not necessarily require to be literally applied as established by the Supreme Employment tribunal Court on 17/07/2007.

The heads of compensation should comprise any possible loss and injury to the worker or his relatives including injury to feelings and reasonable future loss arising from real, not hypothetical, employment promotion.

20% Interest

Finally, the total amount should be added a fixed 20% per annum interest calculated from the date proceedings were instigated until the date the court decides the dispute.